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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,344	09/12/2003	James P. Terry	10018092-2	8034

7590 05/28/2004
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
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EXAMINER

ROYER, WILLIAM J

ART UNIT PAPER NUMBER

2852

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. **6**

10/661,344

Applicant(s)

TERRY ET AL.

Examiner

William J. Royer

Art Unit

2852

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,10,13,17 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,10,13,17 and 24-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Objections

Claims 26 and 27 are objected to because of the following informalities:

Claim 26, line 1, change "apparatus" to --- toner cartridge ---.

Claim 26, line 1, change "or" to --- of ---.

Claim 27, line 1, change "apparatus" to --- toner cartridge ---.

Claim 27, line 1, change "or" to --- of ---.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Saita et al. Referring to Figure 1, a developing device 34 for a copier (i.e., imaging apparatus) is shown. The developing device includes: a housing 34 (i.e., toner reservoir housing) that includes a developing tank 45 and a container case 44 (i.e., toner

reservoir); and a developing agent transporting unit 39 disposed in the container case that serves as a stirrer for mixing developing agent inside the housing (i.e., method of agitating toner). (col 4, lns 20-25) The developing agent transporting unit includes a magnetic belt 49 (i.e., rotatable endless belt) stretched between a pair of belt rollers 47 and 48. It is noted that the above described elements perform a method of agitating toner that is equivalent the method claimed by the applicant.

Claim 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Mizoguchi et al. Referring to Figure 1, a toner supply container or toner cartridge 2 is shown. The toner cartridge includes: a casing 20 (i.e., means for housing a supply of toner) for storing a supply of toner T, the casing includes a non-cylindrical mixing region defined by a periphery; and incorporates an agitating means 17 which has a toner conveying sheet 21 (i.e., means for engaging at least a portion of the toner at the periphery of the non-cylindrical mixing region) attached thereon so as to agitate the toner in the casing. (col 5, lns 15-22)

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 10, 13, 17 and 24-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10 and 13 of U.S. Patent No. US 6,671,481 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because although Claims 10 and 13 of US 6,671,481 B1 are not identical to the currently filed Claims, Claims 10 and 13 of US 6,671,481 B1 describe at least the features currently claimed by the applicant in the above noted claims. That is, Claim 10 of US 6,671,481 B1 claims a toner cartridge, comprising: a housing which defines a toner reservoir; and a rotatable endless belt disposed within the toner reservoir; wherein the toner reservoir is defined by a reservoir primary surface within the housing, and further wherein the rotatable endless belt is positioned proximate the reservoir primary surface. Further, a plurality of rollers which support the rotatable endless belt in proximity to the reservoir primary surface are claimed in the Patent. Furthermore, Claim 13 of US 6,671,481 B1 claims an imaging apparatus, comprising: a toner reservoir housing which defines a toner reservoir and a rotatable endless belt disposed within the toner reservoir. Lastly, the method currently claimed by the applicant is obvious based upon the operation of the elements described in the noted claims of US 6,671,481 B1.

Relevant Prior Art

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Forbes II discloses a particle dispenser that includes a conveyor belt.

Kozuka et al disclose a toner replenishing device that includes chains and a replenishing rod.

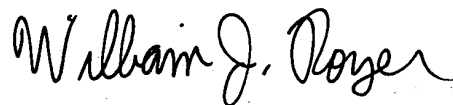
Surti discloses a toner housing that is provided with a wiper assembly that includes an endless rotatable belt having at least one blade extending there from.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Royer whose telephone number is (571) 272-2140. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Arthur T. Grimley can be reached on (571) 272-2136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William J. Royer
Primary Examiner
Art Unit 2852

wjr
May 27, 2004